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May 5, 2016

VIA HAND DELIVERY

Mr. Steve Valenzuela, Chief Executive Officer
CRA/LA, a successor agency to the former
Community Redevelopment Agency of the
City of Los Angeles
448 South Hill Street, Suite 1200
Los Angeles, CA 90013

CRA/LA May 5, 2016 Items #7, 8, 9

Re: Palladium Project
Wilcox Hotel Project
Objections to Proposed delegation of future OPA approvals to staff

Dear Mr. Valenzuela and Governing Board Members:

I. INTRODUCTION.

This firm and the undersigned represent a number of entities, community organizations, and persons interested in enforcement of the CRA/LA's legal duties under the Health and Safety Code and its own redevelopment plans and regulations. We submit this omnibus comment letter for three items on your agenda: the Palladium Project Owner Participation Agreement ("OPA"), the Wilcox Hotel Project OPA, and the proposal for the CRA/LA governing board to no longer review and approve discretionary owner participation agreements in connection with future projects within the Hollywood Redevelopment Plan area.

II. THE PROPOSAL TO EXECUTE PRO FORMA OWNER PARTICIPATION AGREMENTS WITHOUT REQUIRING ENFORCEABLE PUBLIC BENEFITS FOR THE BENEFIT OF THE REDEVELOPMENT AREA IS ILLEGAL AND A DERILECTION OF DUTY BY THE GOVERNING BOARD.

This week, after just a few days' notice to the public, the CRA/LA staff asks the Governing Board to approve massive increases in residential density and FAR for two projects in the Hollywood Redevelopment Plan area. For the staff to have proposed OPAs that simply

approve whatever the City of Los Angeles approved and ask for indemnification of the CRA/LA for taking the requested actions represents a stunning failure to brief the Governing Board on the history of planning and zoning in Los Angeles, as well as the central role that the former redevelopment agency played, and the CRA/LA is still required by law to play, in protecting vital public interests in the Redevelopment Plan.

The proposed actions on the May 5, 2016 CRA/LA meeting agenda appear to be organized and worded as if the entry into an OPA is a mere paperwork formality, and that every development project is entitled to receive the bump in FAR up to 6:1 if it is requested. But that is not the vision, intent, or public purpose of the density increase program in the Redevelopment Plan.

The purpose and intent of the Redevelopment Plan is to use the developer's desire for greater FAR in exchange for obtaining important public benefits. A grant of a significant increase in FAR confers from the people of the City to the developer extremely valuable entitlements worth millions of dollars. There are estimates that the more than doubling of residential density and FAR to the developer of Palladium is worth an additional $50 million. The increase in value for the Wilcox Hotel is probably a doubling of land value.

The increase in density from 4.5:1 to 6:1 is a **discretionary** action of the Governing Board. It involves the careful weighing of public interests to determine what the CRA/LA Board shall require the developer to give back in exchange for the **discretionary** approval of any increase in FAR.

The draft OPAs prepared by the CRA/LA staff, or by outside law firms representing the developers, and attached to the staff reports leave those who know and understand the history of Redevelopment Plan speechless. The Palladium and Wilcox OPAs only provide for 4 things:

- The developer will build the Project as approved by the City.
- The developer will indemnify the CRA/LA for litigation arising out of the approval of the OPA.
- The developer retains the valuable right to transfer the Project entitlements to a buyer.
- The developer only has the right to terminate the OPA prior to commencement of construction.

Thus, the CRA/LA Board and staff do not appear to have reviewed either of these projects to determine what quid pro quo in public benefits packages (i.e., the term that has historically been used in CRA and CRA/LA parlance) shall be required from the developers in return for an approximate doubling of the value of both of these projects. An OPA in the redevelopment context operates like a Development Agreement in the context of a city or county. When a developer signs the OPA, the required provision of significant public benefits is legally enforceable.

Analyzing examples, in the Palladium Project, this office has been critical of the developer's failure to actually commit to preserve the Palladium building for the life of the proposed Palladium residential towers, or to commit to a minimum dollar amount of rehabilitation of the building consistent with Secretary of Interior standards. The developer originally proposed to merely nominate the Palladium for cultural-historical status if it was given all the residential density and FAR it sought for the project (731 units and 6:1 FAR). That was an illusory "public benefit," if it could even be characterized as a benefit.

After Hollywood Heritage and others argued that this was no protection at all (City cultural-historic monument status does not guarantee preservation, it can delay demolition permits for a short period), in the Final EIR the developer scrambled to reveal a "Preservation Plan" for the Palladium Building. This proposal was equally illusory as it only obligated the developer to choose from a list what items of preservation would be performed on the building. As written, it appears the entire "Preservation Plan" condition can be satisfied by choosing one task from the list of preservation items, some of which were just maintenance of the building.

One of the principal rationales for having the FAR increase program in the Redevelopment Plan is to trade that additional density for actual and enforceable preservation of Hollywood's significant inventory of historic resources. As presently conditioned, the Palladium developer only has to choose at least one thing from the list of possible preservation items and its obligation has been satisfied. Before the demise of the former redevelopment agency, if Palladium had sought the increase in density from 4.5:1 to 6:1, the former staff would have reviewed the proposal and informed the developer that some of the $50 million of value associated with the increase in FAR density had to be spent on actual preservation of the Palladium (and other public benefits), including a guarantee that the building would not be demolished over the useful life of the new towers. That would use the increase in density to produce powerful and appropriate public benefits from the density increase program.

A second example for Palladium Project is instructive. During City review of the Project, the developer was severely criticized for failing to provide any affordable housing in the otherwise luxury complex. In response, the City Council office applauded the developer's "voluntary" agreement to offer 37 affordable units in the complex. But close examination of this voluntary commitment reveals it is not even affordable housing as the former redevelopment agency would have required. The developer is merely offering "work force" housing which has no federal or state definition. Apparently, it is offering some of the really small units in the building to persons who earn more than traditional income levels for affordable housing.

Although the Palladium developer is likely to deny that it would ever do this, the City has often taken the position that voluntary conditions agreed to by developers are legally unenforceable. In other words, the developer could renege and the City would not have a legally enforceable right to require performance of the voluntary conditions. The City expressly made this statement with regard to the proposed Development Agreement in the Millennium Project. In the Draft EIR for Millennium, the City stated that all of the public benefits, including a financial payment to the affordable housing trust fund, were proposed for inclusion in the Development Agreement because if it was made a condition of ordinary project entitlements, the public benefits would be legally unenforceable. (That would not be correct if such public benefits were made part of the OPAs.)

Is that going to be the case here? It does not have to be if the CRA/LA Governing Board informs the Palladium Developer that it may only have the $50 million increased value by giving some of it back in the form of a legally enforceable OPA commitment to provide not just meaningless workforce housing, but a true affordable housing component that the former redevelopment agency would have routinely included. This single example is meant to be illustrative, not exhaustive.

In the case of the Wilcox Hotel, that project's request is so grossly overreaching and inappropriate that it is difficult to provide a concrete example of adequate public benefits that should be required and received in exchange for granting the proposed doubling of residential density and FAR. The entire rationale of the Redevelopment Plan is that the former redevelopment agency, and now the CRA/LA, is responsible for completing all Designs for Development Programs, Historic Resources Preservation Programs, and the vital Transportation, which require developers to contribute significant street, sidewalk, and transit support improvements in exchange for any development above the level a project is currently zoned.

Assuming for the moment that the Wilcox Hotel's increased residential density and FAR were somehow appropriate, which it is not, the CRA/LA Board should be drawing upon various plans the former redevelopment agency committed to complete for certain required improvements to the transportation and transit system of Hollywood. Again, such improvements would be extracted as legally enforceable requirements in exchange for granting the **discretionary** increase in FAR.

Accordingly, the proposed OPAs before you mark a dramatic and illegal departure from the CRA/LA's duty to extract valuable public benefits in exchange for and as part of granting such increases in FAR and value for developers.

III. ON A SEPARATE LEGAL GROUND, THE FORMER REDEVELOPMENT AGENCY'S FAILURE TO PREPARE A TRANSPORTATION PLAN MEANS THAT NO INCREASES IN DEVELOPMENT DENSITY CAN BE GRANTED.

Another factor cannot be ignored. Since 1986, when the Hollywood Redevelopment Plan was first approved, the former redevelopment agency committed to developing and adopting a Transportation Plan. This critical plan has never been completed. Nonetheless, the former redevelopment agency, and now CRA/LA, have been approving development permits in the Redevelopment Plan area without knowing whether or not the cumulative impact of development has reach critical thresholds. The Redevelopment Plan EIR specifically concluded that Hollywood would have unacceptable levels of traffic service when average FAR for the entire Plan area reached 2:1.

Under the Plan, the former redevelopment agency, and now CRA/LA, are required to prepare a plan for how to constrain and protect Hollywood's transportation infrastructure if average FAR reached 2:1. Recently, Barron McCoy of the CRA/LA gave a letter to the City of Los Angeles claiming that development activity has not yet reached 2:1, but his letter was unsupported with any evidence. It was bold assertion with no supporting evidence, substantial or otherwise, behind it. If the CRA/LA cannot show its math, it has no credible evidence to support proceeding to approve any more increases in development such as the Palladium and Wilcox Hotel OPAs, until such time as it proves it.

We understand that the former redevelopment agency, and the CRA/LA, have not submitted any of the required transportation monitoring reports to the City for years. In the absence of an adopted and enforceable Transportation Plan, and ongoing compliance with monitoring commitments of the former redevelopment agency, there is no valid basis for the

CRA/LA to continue issuing OPAs to increase density, or even to clear an otherwise by right building permit. For this independent reason, the CRA/LA Governing Board should deny the requests and refer these proposed OPAs back to staff.

IV. THE CITY'S AB 283 GENERAL PLAN CONSISTENCY PROGRAM IMPOSED PERMANENT [Q] CONDITIONS AND "D"DEVELOPMENT LIMITATIONS ON ALL OF THE PARCELS INVOLVED IN THE PALLADIUM AND WILCOX HOTEL PROJECTS.

More fallout from retirements at the City and former redevelopment agency may include a failure of staff to know and understand the history of AB 283 general plan consistency. At the time of preparation of the 1988 Hollywood Community Plan, the City was also under a court order and settlement agreement to make its zoning consistent with the density designations of its general plans, including all of the community plans. In order to achieve that consistency within a pressing deadline, the City performed the consistency actions at the same time of the Hollywood Community Plan.

As a result, permanent [Q] conditions and permanent "D" Development Limitations were imposed on parcels throughout Hollywood, including the parcels involved in the Palladium Project and the Wilcox Hotel. Objections were filed in both of the City proceedings stating that such permanent [Q] conditions and "D" Development Limitations could not be lawfully removed from the parcels by the City and then have the land up-zoned to higher density of 4.5:1. Despite these objections, the City Council purported to delete the permanent [Q] conditions and "D" Development Limitations without demonstrating a lawful basis to delete the permanent [Q] conditions and "D" Development Limitations.

Why is this relevant to the CRA/LA Board? Because under the express language of the Hollywood Redevelopment Plan, the Board only has the power to increase density up from 4.5:1 to 6:1. If the zoned density on the Project site was less than 4.5:1, there would be no valid basis to entertain the requests for the Palladium and Wilcox Hotel OPAs to boost the FAR from 4.5:1 to 6:1. None of the Palladium and Wilcox Hotel parcels can be lawfully boosted to 6:1 FAR if the City's increases from 2:1 FAR for the Wilcox Hotel or from 3:1 and 1.5:1 for the Palladium lots were themselves unlawful, which they were. Thus, as a mandatory prerequisite for the CRA/LA to even consider an increased density of these properties from 4.5:1 up, the CRA/LA would have to make findings explaining how it determined that the City's increase of these lots up to 4.5:1 FAR was lawful. If not, the house of cards collapses.

V. THE PROPOSED DELEGATION OF REVIEW AND APPROVAL OF OPAS FOR DENSITY INCREASES TO CRA/LA STAFF IS IMPROPER.

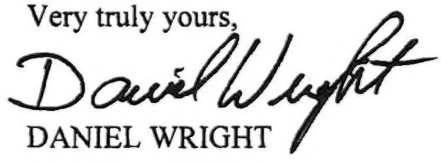
As set forth in this letter to the CRA/LA Governing Board, it is clear that the approval of an increase in FAR density under the Redevelopment Plan is a significant act for which the CRA/LA Board has both a legal and fiduciary duty to exercise its discretion for the public good, and to assure the entities of the Oversight Board that significant public benefits are extracted. Indeed, some public benefit extractions the CRA/LA could require might be direct payments of money to the City, the County, LAUSD, or LACCD.

VI. CONCLUSION.

For the foregoing reasons, the CRA/LA Board must affirmatively reject or decline to act on items 7, 8, and 9. They should be returned to staff with directions to consider what public benefit extractions should be required in order for the requests to potentially proceed to a reconsideration by the Board, and also to consider and publicly report back as to whether or not the CRA/LA can make any findings showing the City's increases in FAR on these lots to 4.5:1 were lawful.

Thank you for your courtesy and attention to these matters.

Very truly yours,



DANIEL WRIGHT
FOR
THE SILVERSTEIN LAW FIRM, APC

Attachments
cc: Client
Governing Board of CRA/LA
Oversight Board of CRA/LA